

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

HENDERSON-UNION RURAL ELECTRIC  
COOPERATIVE CORPORATION

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) CASE NO. 92-136  
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ALLEGED FAILURE TO COMPLY WITH  
KRS 278.020(1)

O R D E R

By Order dated April 3, 1992, the Commission directed Henderson-Union Rural Electric Cooperative Corporation ("Henderson-Union") to show cause why it should not be subject to the penalties provided for under KRS 278.990 for the probable violation of KRS 278.020(1). The probable violation arose from Henderson-Union's construction of a new headquarters building without a Certificate of Public Convenience and Necessity. An informal conference was held on April 30, 1992 and a hearing was held on October 22, 1992.

Henderson-Union presented evidence in support of its need for a new headquarters building and the reasons why it believed such construction was exempt from KRS 278.020(1). The Commission ruled during the hearing that there was no issue of Henderson-Union's need for, or the appropriateness of, the particular building constructed. Rather, the sole issue was whether a Certificate of Public Convenience and Necessity was required under KRS 278.020(1) prior to commencement of construction.

Henderson-Union argues that under KRS 278.020(1), prior Commission approval is needed only if the facilities to be

constructed are to be directly used for the distribution of electricity to customers, such as poles, lines, and substations. Further, Henderson-Union stated that it sought advice on this issue from other utilities as well as its primary lender, and that advice supported Henderson-Union's position.

Based on the evidence of record and being advised, the Commission hereby finds that Henderson-Union's interpretation of KRS 278.020(1) is unreasonable and not consistent with the plain language of the statute. The new headquarters building, having a total cost of approximately \$3.2 million, is an integral part of Henderson-Union's electrical distribution system and performs system-wide functions that are as necessary as poles and wires. As Henderson-Union acknowledged at the hearing, the cost of this building will be recovered from ratepayers as part of the cost of electric service. Thus, for this facility to be included in cost of service, it must be furnishing utility service to the public.

In addition, while Henderson-Union contacted numerous entities regarding an interpretation of KRS 278.020(1), no attempt was made to obtain an opinion from the Commission. Considering all the record evidence, the Commission finds that Henderson-Union knowingly failed to request a certificate pursuant to KRS 278.020(1), and that this constitutes a willful violation for which a civil penalty of \$1,250 should be imposed pursuant to KRS 278.990(1).

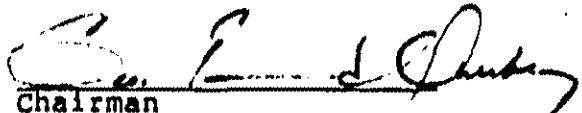
IT IS THEREFORE ORDERED that:

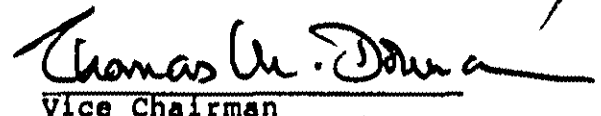
1. A civil penalty of \$1,250 shall be imposed upon Henderson-Union for its failure to obtain a Certificate of Public Convenience and Necessity pursuant to KRS 278.020(1) prior to commencing construction of a new headquarters building.

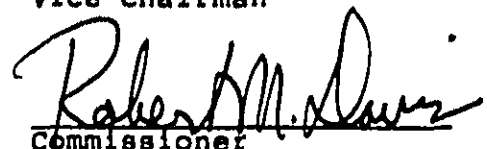
2. Henderson-Union shall pay the \$1,250 within 30 days of the date of this Order by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky this 2nd day of November, 1992.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director